

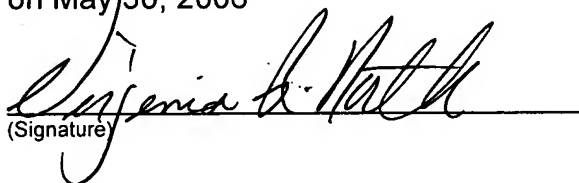
APPEAL BRIEF  
JUN 05 2006  
ATTORNEY DOCKET NO: EQUUS-074Q  
TITLE: AUTOMOTIVE GAUGE MOUNTING BRACKET WITH FRICTIONAL FIT APPERTURES

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<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing) JUN 05 2006 U.S. PATENT & TRADEMARK OFFICE	Application Number	10/755,747
	Filing Date	January 12, 2004
	First Named Inventor	Leon Chen
	Art Unit	3632
	Examiner Name	Anita M. King
Total Number of Pages in This Submission	Attorney Docket Number	EQUUS-074Q

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input checked="" type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input checked="" type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Certificate of Mailing and Return Postcard.
Remarks		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	STETINA BRUNDA GARRED & BRUCKER		
Signature	<i>Bruce B. Brunda</i>		
Printed name	Bruce B. Brunda		
Date	May 30, 2006	Reg. No.	28,497

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**FEE TRANSMITTAL**  
**For FY 2005**

JUN 05 2006

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 250.00 0.00)

**Complete if Known**

Application Number	10/755,747
Filing Date	January 12, 2004
First Named Inventor	Leon C. Chen
Examiner Name	Anita M. King
Art Unit	3632
Attorney Docket No.	EQUUS-074Q

**METHOD OF PAYMENT (check all that apply)**

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☒ Deposit Account Deposit Account Number: 19-4330 Deposit Account Name: Stetina Brunda Garred & Brucker

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**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

**Total Claims**      **Extra Claims**      **Fee (\$)**      **Fee Paid (\$)**      **Multiple Dependent Claims**

\_\_\_\_\_ - 20 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_      **Fee (\$)**      **Fee Paid (\$)**

HP = highest number of total claims paid for, if greater than 20

**Indep. Claims**      **Extra Claims**      **Fee (\$)**      **Fee Paid (\$)**

\_\_\_\_\_ - 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

**Total Sheets**      **Extra Sheets**      **Number of each additional 50 or fraction thereof**      **Fee (\$)**      **Fee Paid (\$)**

\_\_\_\_\_ - 100 = \_\_\_\_\_ / 50 = \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = 0.00

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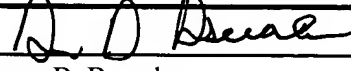
Non-English Specification, \$130 fee (no small entity discount)

Other: Appeal Brief

Fees Paid (\$)

250.00

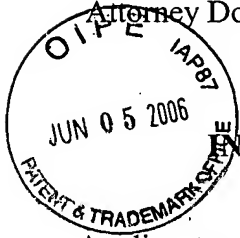
**SUBMITTED BY**

Signature		Registration No. (Attorney/Agent)	28,497	Telephone	(949) 855-1246
Name (Print/Type)	Bruce B. Brunda	Date	July 30, 2006		

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Application No.: 10/755,747  
Attorney Docket: EQUUS-074Q



**THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants:	Ieon Chen	)	Confirmation No.	9631
		)		
Serial No.:	10/755,747	)	Art Unit:	3632
		)		
Filed:	January 12, 2004	)	Examiner:	Anita M.
		)		King
For:	AUTOMOTIVE GAUGE	)		
	MOUNTING BRACKET WITH	)		
	FRICTIONAL FIT APERTURES	)		

**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir/Madam:

Applicant [hereinafter "Appellant"], in the above-captioned patent application, has appealed from the Examiner's final rejection of Claims 1 and 3-13 as set forth in the Final Office Action of December 2, 2005.

A Notice of Appeal in response to the Final Office Action was filed on March 31, 2006. The Appeal Brief is being submitted with the requisite fee under 37 C.F.R. § 41.20(b)(2) in the amount of \$250. An ORAL HEARING IS NOT REQUESTED.

If for any reason the necessary fee is not associated with this file, the Commissioner is authorized to charge the appropriate fee for the Appeal Brief and/or any necessary extension of time fees to Deposit Account Number 19-4330.

06/05/2006 RFEKADU1 00000088 10755747

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**I. REAL PARTY IN INTEREST**

The real party in interest is Innova Electronics Corporation by assignment recorded in the U.S. Patent and Trademark Office on August 9, 2004 at Reel 015057, Frame 0325.

**II. RELATED APPEALS AND INTERFERENCES**

No related appeals and/or interferences are pending.

**III. STATUS OF CLAIMS**

Claims 1 and 3-13, the only claims pending in the subject application, stand finally rejected. Claim 2 has been canceled.

**IV. STATUS OF AMENDMENTS**

There have been no amendments filed after the final rejection of the subject application.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 1 of the present application relates to an automotive gauge mounting structure that is engageable to an automotive vehicle interior. *See, e.g., specification p. 1, lines 10 and 24; specification p. 3, lines 1-2.* The automotive gauge mounting structure is used to mount gauges into a panel having limited space behind the panel. *See, e.g., specification p. 2, lines 10-11.* The gauges have front and rear surfaces, and a bezel. *See, e.g., Fig. 4; specification p. 2, lines 2-3.* In its broadest sense, the structure comprises a bracket having at least one gauge receiving aperture formed in the bracket

wherein the aperture defines a plurality of displaceable segments and recesses extending therebetween. *See, e.g., Figs. 4-5; specification p. 4, lines 14-18; specification p. 4, lines 24-25.*

The segments are displaceable in response to insertion of a gauge into the aperture for friction-fit engagement of the gauge to the bracket whereby the rear end of the gauge passes through the aperture until the gauge bezel abuts against the bracket. *See, e.g., Fig. 4; specification p. 4, lines 18-20, lines 25-27 and lines 29-30.* The friction-fit creates a resilient circumferential gripping force around the gauge, securing the gauge without a rear manipulated locking member. *See, e.g., specification p. 4, lines 10-13.* In addition, the bracket is configured such that for a gauge having a gauge diameter and a recess defining an aperture inner diameter, the aperture inner diameter is less than the gauge diameter. *See, e.g., specification p. 4, lines 15-17; specification p. 5, lines 5-7.*

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

- A. Whether Claims 1, 5, and 7-10 are improperly rejected under 35 U.S.C. § 103(a) as unpatentable over US Patent No. 4,507,706 to Trexler Jr. (hereinafter “Trexler”) in view of US Patent No. 5,702,0762 to Humber (hereinafter “Humber”);
- B. Whether Claims 3 and 6 are improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Trexler combined with Humber and in further view of U.S. Patent No. 4,993,611 to Longo (hereinafter “Longo”);

- C. Whether Claim 4 is improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Trexler combined with Humber and in further view of U.S. Patent No. 3,603,551 to Peterson (hereinafter “Peterson”); and
- D. Whether Claims 1, 3 and 7-13 are improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant’s admitted prior art (hereinafter “APA”) (Figures 1 and 2) in view of US Patent No. 3,365,761 to Kalvig (hereinafter “Kalgig”).

## VII. ARGUMENT

- A. **The rejection of Claims 1, 5, and 7-10 under 35 U.S.C. § 103(a) as being unpatentable over Trexler in view of Humber is in error, the rejection should be reversed, and the subject application should be remanded to the Examiner with instructions to allow Claims 1, 5, and 7-10.**

- i. *The Examiner’s Rejection of Independent Claim 1*

The Examiner submits in the Final Office Action of December 2, 2005, that Trexler discloses an automotive gauge mounting structure engageable to an automotive vehicle interior wherein the structure comprises a bracket and at least one gauge-receiving aperture formed in the bracket for receiving a gauge. *See Office Action p. 2.*

The Examiner further submits that Humber teaches an insulator for insertion into an aperture of a plate wherein the insulator includes at least one receiving aperture formed in the bracket with the aperture defining a plurality of displaceable segments that are displaceable



in response to insertion of a cylindrical object into the aperture for friction-fit engagement.

*See Office Action pages 2-3.*

However, the Examiner concedes that Trexler does not disclose the feature of the apertures having a plurality of displaceable segments. *See Final Office Action p. 2.* To satisfy this feature, the Examiner instead submits that it would have been obvious to one having ordinary skill in the art to have modified the Trexler structure *to include an insulator* as taught by Humber for the purpose of providing a means to hold a cylindrical object such as a gauge rigidly in position. *See Final Office Action p. 3.*

ii. A Review of Trexler

Trexler discloses an instrumentation system which permits gauges installed therein to be interchangeably mounted. *See col. 2, lines 15-16.* A front instrument panel has a plurality of apertures for receiving gauges that are shaped to conform to the instrument panel apertures. *See col. 3, lines 21-25.* A circuit board plate is positioned behind the front instrument panel at a distance corresponding to the depth of the gauges. *See col. 3, lines 26-28.* A circuit board is mounted behind the circuit board plate. *See col. 3, lines 28-29.* Projecting from the rear of each gauge are lead and ground terminals and a mounting pin. *See col. 3, lines 30-31.* The gauges are held in place by the mounting pin which extends through a circuit board plate aperture and into a bracket mounted on the circuit board. *See col. 3, lines 62-65.*

iii. A Review of Humber

Humber discloses a pipe insulator designed to mount 3/8, 1/2 or 3/4 inch pipe in a hole formed in a metal wall stud. *See col. 1, lines 56-58.* The pipe insulator comprises a hollow

cylindrical body having a radially-extending mounting flange formed on a rear end of the cylindrical body. *See col. 2, lines 37-38.* The outer diameter of the cylindrical body is sized to fit the hole in the metal wall stud. *See col. 2, lines 55-57.* Mounting fingers hold the mounting flange against the metal stud. *See col. 2, line 66 to col. 3, line 6.* The cylindrical body has an axially extending slot to facilitate insertion into the hole in the metal stud. *See col. 3, lines 12-16.* The pipe insulator includes pipe gripping segments which extend radially inwardly from the cylindrical body. *See col. 2, lines 41-43.* The pipe gripping segments are bendable a sufficient amount to permit passage of the pipe through the cylindrical body while holding the pipe rigidly in position. *See col. 2, lines 51-54.*

iv. *Appellant's Independent Claim 1*

Appellant's Independent Claim 1 recites, *inter alia*, an automotive gauge mounting structure engageable to an automotive vehicle interior...and comprising. . . a bracket, at least one gauge receiving aperture formed in the bracket, *the aperture defining a plurality of displaceable segments* and recesses extending therebetween, *the segments being displaceable in response to insertion of a gauge* into the aperture for friction-fit engagement of the gauge to the bracket, and the gauge having a gauge diameter and the recesses defining an aperture inner diameter...[which is]... less than the gauge diameter. The aforementioned features recited in independent Claim 1 are not taught or suggested by Trexler and are in fact opposite to those teachings. Accordingly, Appellant's independent Claim 1 as well as Claims 5 and 7-10 which depend from Claim 1 are not taught or suggested by Trexler.

- a. *There is no evidence supporting a motivation to modify Trexler to include a plurality of displaceable segments.*

Trexler cannot be modified to include displaceable segments because displaceable segments would interfere with axial alignment of the electrical lead and ground terminals with the circuit board plate aperture and female terminals to which the lead and ground terminals electrically mate. *See col. 3, lines 55-61.* Furthermore, modifying Trexler with displaceable segments would interfere with axial alignment of the mounting pin with a separate circuit board plate aperture so that the mounting pin may mechanically mate with the bracket. *See col. 3, lines 62-65.* The inability to modify Trexler with displaceable segments is even more apparent in the case where a metal circuit board plate is used because the lead terminal cannot come into contact the metal circuit board plate as it passes therethrough or the lead terminal will be become grounded. *See col. 4, lines 35-39.*

*The Examiner concedes in the Final Office Action that Trexler does not disclose the feature of the apertures having a plurality of displaceable segments.* *See Final Office Action p. 6.* As is well known, references can be modified for purposes of a Section 103 rejection only if there is some suggestion or incentive to do so. *In re Fritch*, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992); *MPEP* § 2143.01. Thus, some motivation would need to be shown in order to so drastically modify the Trexler instrumentation system to include a plurality of displaceable segments because, “impermissible hindsight must be avoided and the [conclusion of obviousness] must be reached on the basis of the facts gleaned from the prior art.” *In re Zurko*, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *See also MPEP* § 2142. The Examiner failed to identify any teaching in the prior art or any evidence of the knowledge of one of ordinary skill in the art that would lead to this improper modification of Trexler. Since no evidence has been provided, the Examiner has not met her burden of establishing a *prima facie* case of obviousness.

b. *The case law cited by the Examiner does not provide the missing motivation to modify the Trexler reference.*

In the Final Office Action, the Examiner relies on two cases to provide support for her improper finding of obviousness. In these two cases, the Court held that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The Examiner then incorrectly indicates that Humber is used to provide a means for ensuring a more secured mounting between a cylindrical object and the aperture into which it is inserted and that to do so is well known in the art. *See Final Office Action p. 3.*

In sharp contrast to the above-noted assertions by the Examiner, *Trexler clearly does not teach modifying the apertures with a plurality of displaceable segments.* In fact, *Trexler teaches away from modifying the apertures with displaceable segments* for at least the following reasons. Firstly, as discussed above, adding this feature would *interfere with the axial alignment* of the leads with the female terminals as well as frustrate the alignment of the mounting pin with the bracket. Secondly, *angular alignment of the gauge provided by engagement of the aligning rib with the slot (See col. 3, lines 48-54) would be prevented* due to the spacing between the gauge diameter and the aperture diameter as a result of the displaceable segments. Thirdly, *retention of the gauge in Trexler is already provided by mechanical engagement of the mounting pin to the bracket* such that there is no motivation

to further add displaceable segments to frictionally fit the gauge within the aperture. Fourth, because the housing in Trexler is pivotable outwardly to provide access to the rear of the gauges, there is no motivation to further add displaceable segments for friction-fit mounting of the gauges to achieve Appellant's stated objective of obviating the need for rear access when installing the gauge. To modify the Trexler reference in the manner suggested by the Examiner would render Trexler inoperable for its intended purpose.

c. *Knowledge available to one of ordinary skill in the art does not provide the motivation to modify Trexler by adding displaceable segments to the apertures.*

In the Final Office Action, the Examiner infers that one of ordinary skill in the art would be motivated to combine the gauge mounting system of Trexler with the pipe mounting system of Humber by stating that it is well known to use displaceable segments such as those of Humber to mount cylindrical objects such as gauges. *See Office Action p. 6.* An objective of the instrumentation system of Trexler is to permit gauges to be interchangeably mounted therein. *See col. 2, lines 15-16.* An objective of the insulator of Humber is for plumbing installations in a metal wall stud of a building and, more specifically, for use in supporting a water pipe inside an interior wall. *See col. 1, lines 8-15.* Appellant submits that it is well known to one of ordinary skill in the art of plumbing that plumbing installations in buildings and water pipe installations in interior walls of a building are generally not intended to be removable but rather that are intended as permanent installations. Because Trexler's stated objective of removably mounting gauges is diametrically opposed to Humber's stated objective of permanent mounting of pipes in a

building, the Examiner has failed in identifying evidence of knowledge of one of ordinary skill in the art that would lead to this improper combination of Humber with Trexler. Because no evidence has been provided, the Examiner has not met her burden of establishing a *prima facie* case of obviousness. Such proposed modifications are inappropriate for an obviousness inquiry. *See In re Gordon*, 221 USPQ2d 1125, 1127 (Fed. Cir. 1984).

Accordingly, the rejection of independent Claim 1 under 35 U.S.C. § 103(a) must be reversed and the application remanded to the Examiner with instructions to allow Claim 1.

v. Appellant's Dependent Claims 5 and 7-10

Further, Appellant submits that Claims 5 and 7-10 are allowable at least for the reason that these claims depend from an allowable base claim and recite additional features that further define the present invention.

Accordingly, Appellant respectfully requests that the Board reverse the rejection of dependent Claims 5 and 7-10 under 35 U.S.C. § 103(a) and remand the subject application to the Examiner with instructions to allow such claims.

**B. The rejection of Claims 3 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Trexler in view of Humber and in further view of Longo is in error, the rejection should be reversed, and the subject application should be remanded to the Examiner with instructions to allow Claims 3 and 6.**

i. The Examiner's Rejection of Claims 3 and 6

The Examiner submits in the Final Office Action of December 2, 2005, that Trexler in view of Humber disclose the claimed invention. **However, the Examiner concedes that Trexler does not disclose the limitation of recesses being provided with a series of radial cuts.** See Final Office Action p. 3.

To satisfy this feature, the Examiner indicates that at the time the invention was made, it would have been obvious to one having ordinary skill in the art to have modified the bracket in Trexler combined with Humber to have included the recesses as taught by Longo for the purpose of providing an alternative, mechanically equivalent arrangement for rigidly supporting a cylindrical object such as a gauge within the aperture to prevent unwanted detachment of the gauge from the bracket. See Final Office Action p. 3-4.

ii. A Review of Trexler

Trexler discloses an instrumentation system which permits gauges installed therein to be interchangeably mounted. See col. 2, lines 15-16. A front instrument panel has a plurality of apertures for receiving gauges that are shaped to conform to the instrument panel apertures. See col. 3, lines 21-25. A circuit board plate is positioned behind the front instrument panel at a distance corresponding to the depth of the gauges. See col. 3, lines 26-28. A circuit board is mounted behind the circuit board plate. See col. 3, lines 28-29. Projecting from the rear of each gauge are lead and ground terminals and a mounting pin. See col. 3, lines 30-31. The gauges are held in place by the mounting pin which extends through a circuit board plate aperture and into a bracket mounted on the circuit board. See col. 3, lines 62-65.

iii. A Review of Humber

Humber discloses a pipe insulator designed to mount 3/8, 1/2 or 3/4 inch pipe in a hole formed in a metal wall stud. *See col. 1, lines 56-58.* The pipe insulator comprises a hollow cylindrical body having a radially-extending mounting flange formed on a rear end of the cylindrical body. *See col. 2, lines 37-38.* The outer diameter of the cylindrical body is sized to fit the hole in the metal wall stud. *See col. 2, lines 55-57.* Mounting fingers hold the mounting flange against the metal stud. *See col. 2, line 66 to col. 3, line 6.* The cylindrical body has an axially extending slot to facilitate insertion into the hole in the metal stud. *See col. 3, lines 12-16.* The pipe insulator includes pipe gripping segments which extend radially inwardly from the cylindrical body. *See col. 2, lines 41-43.* The pipe gripping segments are bendable a sufficient amount to permit passage of the pipe through the cylindrical body while holding the pipe rigidly in position. *See col. 2, lines 51-54.*

iv. A Review of Longo

Longo discloses a bracket having a receiving aperture including a plurality of displaceable segments and recesses extending therebetween. *See col. 3, lines 27-30.* The recesses are provided with a series of radial cuts defining additional displaceable segments therebetween with the cuts being of generally equal length. *See col. 3, lines 27-30.*

v. Appellant's Claims 3 and 6

Appellant's Claims 3 and 6 are dependent upon base Claim 1 which recites, *inter alia*, an automotive gauge mounting structure engageable to an automotive vehicle interior...and comprising. . . a bracket, at least one gauge receiving aperture formed in the bracket, *the*



*aperture defining a plurality of displaceable segments and recesses extending therebetween, the segments being displaceable in response to insertion of a gauge into the aperture for friction-fit engagement of the gauge to the bracket, and the gauge having a gauge diameter and the recesses defining an aperture inner diameter...[that is]... less than the gauge diameter. The aforementioned features recited in independent Claim 1 are neither taught nor suggested by Trexler or Humber and are, in fact, opposite to those teachings. Accordingly, Appellant's Claims 3 and 6 which depend from Claim 1 are likewise not taught or suggested by Trexler.*

*a. Appellant's independent Claim 1 has been shown above to be allowable; therefore, dependent Claims 3 and 6 are likewise allowable.*

The further rejection of Claims 3 and 6 under 103(a) as being unpatentable over Trexler combined with Humber in view of Longo is improper for the reasons discussed above in relation to the Examiner's rejection of Appellant's independent Claim 1 under 35 U.S.C. 103(a).

In particular, the invention as defined in Claim 1 and from which Claims 3 and 6 depend cannot be properly modified to include the displaceable segments as this modification would render Trexler inoperable. More particularly, as stated above, including the *displaceable segments in the apertures would interfere with axial alignment* of the electrical leads to the female terminals as well as interfering with axial alignment of the mounting pin to the circuit board bracket. *See col. 3, lines 55-65.* As was also discussed above, including the *displaceable segments in the apertures would create a radial spacing between the gauge diameter and the aperture and would therefore prevent angular*

alignment of the gauge due to inability to engage the rib on the gauge with the slot formed in the front instrument panel. (See col. 3, lines 48-54). To modify Trexler and Humber with Longo would further render Trexler unsuitable for its intended purpose.

Accordingly, Appellant respectfully requests that the Board reverse the rejection of Claims 3 and 6 under 35 U.S.C. 103(a) and remand the subject application to the Examiner with instructions to allow such Claims.

**C. The rejection of Claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Trexler in view of Humber and in further view of Peterson is in error, the rejection should be reversed, and the subject application should be remanded to the Examiner with instructions to allow Claim 4.**

i. The Examiner's Rejection of Claim 4

The Examiner submits in the Final Office Action of December 2, 2005, that Trexler in view of Humber disclose the claimed invention. However, the Examiner concedes that Trexler combined with Humber does not disclose the limitation of recesses defining a cross-shaped aperture. See Final Office Action p. 4.

To satisfy this feature, the Examiner indicates that at the time the invention was made, it would have been obvious to one having ordinary skill in the art to have modified the bracket in Trexler combined with Humber to have included the cross-shaped recesses as taught by Peterson for the purpose of providing an alternative, mechanically equivalent arrangement for rigidly supporting a cylindrical object such as a gauge within the aperture to prevent unwanted detachment of the gauge from the bracket. See Final Office Action p. 4.

ii. A Review of Trexler

Trexler discloses an instrumentation system which permits gauges installed therein to be interchangeably mounted. *See col. 2, lines 15-16.* A front instrument panel has a plurality of apertures for receiving gauges that are shaped to conform to the instrument panel apertures. *See col. 3, lines 21-25.* A circuit board plate is positioned behind the front instrument panel at a distance corresponding to the depth of the gauges. *See col. 3, lines 26-28.* A circuit board is mounted behind the circuit board plate. *See col. 3, lines 28-29.* Projecting from the rear of each gauge are lead and ground terminals and a mounting pin. *See col. 3, lines 30-31.* The gauges are held in place by the mounting pin which extends through a circuit board plate aperture and into a bracket mounted on the circuit board. *See col. 3, lines 62-65.*

iii. A Review of Humber

Humber discloses a pipe insulator designed to mount  $\frac{3}{8}$ ,  $\frac{1}{2}$  or  $\frac{3}{4}$  inch pipe in a hole formed in a metal wall stud. *See col. 1, lines 56-58.* The pipe insulator comprises a hollow cylindrical body having a radially-extending mounting flange formed on a rear end of the cylindrical body. *See col. 2, lines 37-38.* The outer diameter of the cylindrical body is sized to fit the hole in the metal wall stud. *See col. 2, lines 55-57.* Mounting fingers hold the mounting flange against the metal stud. *See col. 2, line 66 to col. 3, line 6.* The cylindrical body has an axially extending slot to facilitate insertion into the hole in the metal stud. *See col. 3, lines 12-16.* The pipe insulator includes pipe gripping segments which extend radially inwardly from the cylindrical body. *See col. 2, lines 41-43.* The pipe gripping segments are

bendable a sufficient amount to permit passage of the pipe through the cylindrical body while holding the pipe rigidly in position. *See col. 2, lines 51-54.*

iv. *A Review of Peterson*

Peterson discloses a toolholder having a rigid support member defining a channel portion having spaced openings. *See col. 1, lines 45-61.* A strip is insertable in the channel portion and has cross slits which align with the openings. *See col. 1, lines 62-66.*

v. *Appellant's Claim 4*

Appellant's Claim 4 is dependent upon base Claim 1 which recites, *inter alia*, an automotive gauge mounting structure engageable to an automotive vehicle interior...and comprising. . . a bracket, at least one gauge receiving aperture formed in the bracket, *the aperture defining a plurality of displaceable segments and recesses extending therebetween, the segments being displaceable in response to insertion of a gauge* into the aperture for friction-fit engagement of the gauge to the bracket, and the gauge having a gauge diameter and the recesses defining an aperture inner diameter...[that is]... less than the gauge diameter. The aforementioned features recited in independent Claim 1 are neither taught nor suggested by Trexler or Humber and are, in fact, opposite to those teachings. Accordingly, Appellant's Claim 4 which depends from Claim 1 are likewise not taught or suggested by Trexler.

- a. *Appellant's independent Claim 1 has been shown above to be allowable; therefore, dependent Claim 4 is likewise allowable.*

The further rejection of Claim 4 under 103(a) as being unpatentable over Trexler combined with Humber in view of Peterson is improper for the reasons discussed above in relation to the Examiner's rejection of Appellant's independent Claim 1 under 35 U.S.C. 103(a).

As was discussed above, the invention as defined in Claim 1 and from which Claim 4 depends cannot be properly modified to include the displaceable segments as such modification would render Trexler inoperable. More particularly, as stated above, *such modification would interfere with axial alignment* of the electrical leads and mounting pin as well as *prevent angular alignment of the gauge*. See col. 3, lines 48-54. To modify Trexler and Humber with Peterson would further render Trexler unsuitable for its intended purpose.

Accordingly, Appellant respectfully requests that the Board reverse the rejection of Claim 4 under 35 U.S.C. 103(a) and remand the subject application to the Examiner with instructions to allow this Claim.

- D. **The rejection of Claims 1, 3 and 7-13 under 35 U.S.C. § 103(a) as being unpatentable over APA Figures 1 and 2 in view of Kalvig is in error, the rejection should be reversed, and the subject application should be remanded to the Examiner with instructions to allow Claims 1, 3 and 7-13.**

i. The Examiner's Rejection of Claims 1, 3 and 7-13

The Examiner submits in the Final Office Action of December 2, 2005, that APA Figures 1 and 2 disclose an automotive gauge mounting structure comprising a bracket having at least one gauge-receiving aperture. *See Final Office Action p. 4.* The Examiner also submits that APA discloses that the gauge has a gauge diameter and the aperture has an inner diameter that is less than the gauge diameter. *See Final Office Action p. 4.* In addition, the Examiner submits that the mounting structure comprises three gauge receiving apertures and that the bracket defines interior and exterior sides and a receiving surface about the periphery of the aperture to receive a lip of the gauge. *See Final Office Action p. 4.*

However, the Examiner concedes that APA does not disclose the feature of the apertures having a plurality of displaceable segments. *See Final Office Action p. 5.* To satisfy this feature, the Examiner instead submits that it would have been obvious to one having ordinary skill in the art to have modified the APA structure *to include displaceable segments and recesses* as taught by Kalvig for the purpose of providing an alternative means for retaining the gauge within the bracket and for the purpose of providing *easier installation* of the gauge within the bracket. *See Final Office Action p. 5.*

ii. A Review of APA

Figures 1 and 2 of APA disclose a gauge bracket for supporting gauges. *See p. 1, line 26 to p. 2, line 1.* The gauge includes a gauge body which extends through an aperture of the bracket until the gauge bezel abuts the bracket. *See p. 2, lines 2-3.* A locking ring is threadably engaged to the gauge body to compress against the rear of the bracket for holding

the gauge within the bracket. *See p. 2, lines 3-5.* The bracket may be secured to the vehicle by screws or other fasteners extending through bracket aperture. *See p. 2, lines 5-6.*

iii. *A Review of Kalvig*

The Kalvig disclosure is directed to a shaft-gripping device for holding broom handles, rods, shanks or other similar stem-like elements. *See col. 2, lines 51-52.* Kalvig discloses upper and lower plates that may be horizontally oriented and which are provided with circular openings. *See col. 2, lines 23-29.* Clamped between the two plate is a flexible layer of plastic or rubber material. *See col. 2, lines 32-34.* The hole in the flexible layer is centered in the circular openings of the plate and is smaller than the circular openings. *See col. 2, lines 34-35.* Radial slits extend from the hole in the flexible layer to form fingers that are capable of flexing away from the lower plate. *See col. 2, lines 40-49.*

iv. *Appellant's Independent Claim 1*

Appellant's Independent Claim 1 recites, *inter alia*, an automotive gauge mounting structure engageable to an automotive vehicle interior...and comprising. . . a bracket, at least one gauge receiving aperture formed in the bracket, *the aperture defining a plurality of displaceable segments and recesses* extending therebetween, *the segments being displaceable in response to insertion of a gauge* into the aperture for friction-fit engagement of the gauge to the bracket, and the gauge having a gauge diameter and the recesses defining an aperture inner diameter...[which is]... less than the gauge diameter. The aforementioned features recited in independent Claim 1 are not taught or suggested by APA and are in fact opposite to those teachings. Accordingly, Appellant's independent Claim 1 as well as Claims 3 and 7-13 which depend from Claim 1 are not taught or suggested by APA.

- a. *Knowledge available to one of ordinary skill in the art does not provide the motivation to modify APA by adding displaceable segments of Kalvig to the apertures.*

In the Final Office Action, the Examiner indicates that one of ordinary skill in the art would be motivated to combine the bracket of APA with the shaft-gripping device of Kalvig by stating that it would have been obvious to modify the bracket in APA to include the displaceable segments as taught by Kalvig for the purpose of providing a means for easier installation of the gauge within the aperture of the bracket. *See Final Office Action p. 5.* However, a stated objective for providing the bracket of APA is to mount add-on gauges within a vehicle *See Specification, p. 1, lines 22-24.* A stated objective of the shaft-gripping device of Kalvig is for holding broom handles, rods, shank or other similar stem-like elements. *See col. 2, lines 51-52.* The Examiner improperly draws motivation to combine the references solely due to the advantages provided by Appellant's invention in facilitating installation of the gauge within the aperture of the bracket. It is improper to draw such motivation from Appellant's invention and the combination of references is not supported by either an express or implicit showing of motivation to modify the prior art described in the present application or supported by findings related thereto. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed Cir. 1999), *In re Kotzab*, 55 USPQ2d 1313, 1317 (Fed Cir. 2000).

Because no evidence has been provided regarding any teaching in the prior art or any evidence of the knowledge of one of ordinary skill in the art that would lead to this improper modification of APA, the Examiner has not met her burden of establishing a *prima facie* case of obviousness.



- b. *The combination of APA with Kalvig would render Kalvig unsuitable for its intended purpose .*

In the Final Office Action, *the Examiner incorrectly indicates that modifying the bracket in APA to include displaceable segments of Kalvig would provide an alternative mechanical means for retaining the gauge within the bracket.* See Final Office Action p. 5.

APA indicates that gauges can become defective and need to be replaced and that the bracket shown in APA Figures 1 and 2 can be used to replace the defective gauges. See Specification p. 2, lines 17. Under this rationale, the replacement gauges that are installed using the APA bracket can themselves require replacement with new or repaired gauges inserted into the aperture. Although the bracket of APA must securely mount the gauges during their useful life, the APA bracket must therefore also allow for removal of the gauge without damaging thereof so that the gauge can be repaired and replaced.

*Combining the bracket of APA with the displaceable segment of Kalvig will not permit removal of the gauges from the bracket* without using considerable force as Kalvig expressly recites that withdrawal of a shaft-like member will receive considerable resistance. See col. 2, lines 69-72. More specifically, Kalvig indicates that an object of the shaft-gripping device is to allow a shaft to be inserted due to the fingers yielding away from one of the plates when the shaft penetrates the hole. See col. 1, lines 56-58. However, Kalvig also indicates that the fingers resist flexing upon withdrawal of the shaft and become comparatively stiff upon withdrawing the shaft from the device. See col. 1, lines 58-61. Kalvig further indicates that withdrawal of the shaft requires that the inner tips of the fingers must bend downwardly in order to allow withdrawal of the shaft. See col. 3, lines 53-60.

The resistance required to overcome the gripping force of the displaceable segments of Kalvig may exceed the capabilities of the gauge and may result in unrepairable damage to the gauge.

Therefore, even disregarding the Examiner's improper motivation to combine APA with Kalvig based solely on the advantages provided by Appellant's invention in facilitating installation of the gauge within the aperture of the bracket as discussed above, the Examiner also incorrectly states that the motivation for such combination would be to provide a "mechanically equivalent means for retaining the gauge within the bracket." See *Final Office Action* p. 5. As was earlier mentioned, references can be modified for purposes of a Section 103 rejection *only if there is some suggestion or incentive to do so*. In *re Fritch*, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). Thus, some evidence of motivation would need to be shown in order to modify the APA bracket to include Kalvig's displaceable segments. The Examiner failed to identify any teaching in the prior art or any evidence of the knowledge of one of ordinary skill in the art that would lead to this improper modification of APA. Since no evidence has been provided, the Examiner has not met her burden of establishing a *prima facie* case of obviousness.

Accordingly, the rejection of independent Claim 1 under 35 U.S.C. § 103(a) must be reversed and the application remanded to the Examiner with instructions to allow Claim 1.

v. Appellant's Dependent Claims 3 and 7-13

Further, Appellant submits that Claims 3 and 7-13 are allowable at least for the reason that these claims depend from an allowable base claim and recite additional features that further define the present invention.

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Accordingly, Appellant respectfully requests that the Board reverse the rejection of dependent Claims 3 and 7-13 under 35 U.S.C. § 103(a) and remand the subject application to the Examiner with instructions to allow such claims.

### **VIII. CLAIMS APPENDIX**

1. An automotive gauge mounting structure engagable to an automotive vehicle interior, the structure comprising:

- a) a bracket;
- b) at least one gauge receiving aperture formed in the bracket;
- c) the aperture defining a plurality of displaceable segments and recesses extending therebetween;
- d) the segments being displaceable in response to insertion of a gauge into the aperture for friction-fit engagement of the gauge to the bracket; and
- e) the gauge having a gauge diameter and the recesses defining an aperture inner diameter, the aperture inner diameter being less than the gauge diameter.

3. The bracket as recited in Claim 1 wherein recesses are provided with a series of radial cuts, the cuts defining additional displaceable segments therebetween.

4. The bracket as recited in Claim 1 wherein the recesses define a cross-shape aperture, having a plurality of displaceable interior segments.

5. The bracket as recited in Claim 1 wherein the recesses define a plurality of outer arcuate recesses and the displaceable segment defines a plurality of displaceable inner arcuate segments disposed intermediate arcuate recesses.

6. The bracket of Claim 3 wherein the radial cuts are of generally equal length.

7. The bracket as recited in Claim 1 wherein the aperture is generally circularly shaped.

8. The bracket as recited in Claim 7 wherein the structure comprises two apertures and each one of the apertures is of generally equivalent size.

9. The bracket as recited in Claim 1 wherein the bracket includes three gauge receiving apertures formed therein.

10. The bracket as recited in Claim 1 wherein the segments are equidistantly spaced around the aperture.

11. The bracket as recited in Claim 1 wherein the bracket defines an interior side and an exterior side and the segments are displaceable toward the interior side of the bracket.

12. The bracket as recited in Claim 11 wherein displacement of the segments in response to insertion of the gauges into the aperture deforms the segments.

13. The bracket as recited in Claim 1 wherein the bracket defines an interior side, an exterior side and a surface about the periphery of the aperture, the gauge defining a lip and being insertable through the aperture from the exterior side to the interior side until the gauge lip contacts the surface about the aperture periphery, and the segments being displaceable toward the interior side upon insertion of the gauge for resisting removal of the gauge from the bracket.

#### **IX. EVIDENCE APPENDIX**

No evidence is being submitted herewith.

#### **X. RELATED PROCEEDINGS APPENDIX**

No related proceedings are pending.

**CONCLUSION**

In view of the foregoing, it is submitted that none of the references of record, when considered either alone or in any proper combination thereof, anticipates or renders obvious the Appellant's invention as recited in Claims 1, 2, 4, and 7-11. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Appellant respectfully submits that each and every appealed claim of the present invention meets the requirements for patentability under 35 U.S.C. § 103, and requests that all of the aforementioned rejections be reversed by the Board, and that the application be remanded to the Examiner for withdrawal of the rejections.

Accordingly, allowance of the present application and the above-mentioned claims therein is respectfully requested and believed to be appropriate.

Respectfully submitted,

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